

### **REMARKS**

The non-final Office Action mailed September 10, 2007, has been carefully reviewed and these remarks are responsive thereto. Claims 14, 22, and 29 have been amended, claims 30-33 have been added, and no claims have been canceled. No new matter has been introduced. Claims 14, 16-23, 25, and 26-33 are remain pending in this application upon entry on the present amendment. Entry of the amendments, reconsideration and allowance of the instant application are respectfully requested.

#### ***Rejections Under 35 U.S.C. § 112***

Claims 14, 22, and 29 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Office Action alleges that the phrase “the state of fulfillment” lacks antecedent basis, and also requests clarification regarding the phrase “from zero to completion.” Notwithstanding the merits of these rejections, Applicants have amended to clarify present these claims in a more preferred form. Accordingly, Applicants respectfully request withdrawal of these rejections.

#### ***Rejections under 35 U.S.C. § 103***

Claims 14, 16-17, 21-23, and 25-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,889,198 (Kawan), in view of U.S. Patent No. 6,293,865 (Kelly). Applicants respectfully traverse this rejection for at least the following reasons.

As discussed in Applicants disclosure, one of the problems of conventional loyalty programs relates to the fact that they are complicated to implement for users. In the past, when paper coupons were used, users had to collect the coupons, to bring them with him to the retailer and then to have the right coupon to match his purchases. This complication has been partly eliminated with electronic coupons. However, other conventional electronic coupon systems have drawbacks rendering them confusing and difficult to use. For instance, conventional electronic coupon systems do not allow the user of the card to read the coded information freely on different types of cards in order to know, as with the old fashioned system of paper coupons, what advantages he is entitled to with his coupons. Additionally, conventional electronic coupon systems do not offer the user a clear, comprehensible and immediate view of the accumulated

advantages present on the card for each of the programs and/or merchants concerned, as discussed on page 2 of Applicants' specification.

In contrast to these conventional systems, the invention as claimed in amended claim 14 recites a device for processing and displaying information obtained from coded data, comprising a "calculating means comprising means for formatting data output from the registers in a uniform way, said data corresponding to at least two types of bonus counters stored in corresponding specific files and taken among frequency of visits, recency of visits, cumulative amount spent, and promotion points, the data-display means being configured to display information corresponding to said formatted data in a uniform way, the device further comprising means for navigation through the stored data by a user of the device in order to display said information, and wherein the means for formatting the data and for displaying the information in a uniform way comprise means for displaying a graduated scale directly showing graphically a state of fulfillment of a bonus corresponding to said information in a uniform way between a zero level corresponding to no bonus available and a completion level corresponding to a maximum of bonus available." (Emphasis added)

Specifically, amended claims 14, 22, and 29 each recite "data corresponding to at least two types of bonus counters stored in corresponding specific files and taken among frequency of visits, recency of visits, cumulative amount spent, and promotion points." However, neither Kawan nor Kelly discloses a system with "two types of bonus counters," as recited. Kelly only discloses a prize awarded based on points (Figure 13), and although Kawan refers to loyalty points, it does not teach or suggest bonuses based on frequency, recency, or amount spent. Furthermore, the Office Action does not identify any portion of Kawan or Kelly that teaches "data corresponding to at least two types of bonus counters stored in corresponding specific files and taken among frequency of visits, recency of visits, cumulative amount spent, and promotion points." In fact, the Office Action appears to acknowledge on page 5, second paragraph, that the references fail to teach at least two types of bonus counters, as recited in claims 14, 22, and 29.

However the Office Action then alleges that "data corresponding to at least two types of bonus counters ... taken among frequency of visits, recency of visits, cumulative amount spent, and promotion points," constitutes nonfunctional descriptive material. Office Action, page 5. The

Examiner further argues on page 7, “The displayed data itself does not change the function of the invention, and it would be obvious to display whatever information would be necessary in the case.” Applicants respectfully disagree. Displaying data “corresponding to at least two types of bonus counters,” in a uniform way in a graduated scale implies a corresponding means of calculation for converting the two different types of bonus counters in a same uniform counting scheme for then providing the uniform display of information.

Furthermore, claims 14, 22, and 29, as amended, recite that the two types of bonus counters are “stored in corresponding specific files.” Neither Kawan nor Kelly, alone or in combination, teaches or suggests storing two different bonus counters in different files. Applicants also note that this feature, describing the file storage configuration of the claimed device, is a functional and structural distinction between the invention as recited and the cited references.

Claims 14, 22, and 29 also recite “means for formatting the data and for displaying the information in a uniform way compris[ing] means for displaying a graduated scale.” Even assuming, *arguendo*, that Kawan or Kelly disclosed two types of bonus counters taken from frequency of visits, recency of visits, cumulative amount spent, and promotion points, these references would still fail to teach or suggest displaying these multiple types of bonus counter data “in a uniform way” or “in a graduated scale.” As discussed above, displaying different bonus counters in a uniform way in a graduated scale implies converting the two different bonus counters into a same uniform counting scheme, for providing the uniform display. However, neither Kawan nor Kelly teaches or even suggests a scale which provides users with a visual and immediate opportunity to view and understand the advantages of multiple different types of bonuses, or which allows the user to change one or more types of behaviour, such as the user’s frequency of shopping at one retailer or another, or the amount of money the user spends at different retailers.

To further illustrate this distinction, an example in accordance with aspects of the Applicants’ disclosure may include a graduated scale displayed in the form of a Coca-Cola® bottle which is progressively filled. For instance, a quarter of the bottle may be filled based on the customer’s first visit to a merchant, and another quarter of the bottle may be filled based on a determination that the customer spent an amount over a pre-determined dollar amount during

that visit. Then, on the customer's next visit, the bottle may be filled entirely based on a determination that the customer returned to the same merchant within a certain time window (e.g., less than five days later). In this example, once the bottle is filled the customer may then be entitled to a free bottle of Coca-Cola® at the merchant.

In contrast to the above example and the language recited in claims 14, 22, and 29, neither Kawan nor Kelly teaches a "means for formatting the data and for displaying the information in a uniform way compris[ing] means for displaying a graduated scale." In Kelly, the "prize bucks" illustrated in Figure 13 only relate to the points shown in the scoring table 1308, and do not teach or suggest using multiple types from frequency, recency, amount, and promotional bonus values to modify the position on a graduated scale in a uniform way. Similarly, Kawan relates to tracking smart card merchant loyalty program information for a customer, but does not teach or suggest displaying multiple types of bonus data "in a uniform way" or "in a graduated scale," as recited in claims 14, 22, and 29. Applicants further submit that using different types of data for modifying a single scale is contrary not only to the teachings of Kawan and Kelly, but also to the accepted wisdom of other similar prior art systems, because scales are conventionally used to measure a series or scheme of rank of a single species of data, such as distance, temperature, etc., rather than different types of data.

Furthermore, as discussed previously in the Amendment submitted June 1, 2007, Applicants disagree that either Kawan or Kelly teaches or suggests, "a graduated scale directly showing graphically a state of fulfillment of a bonus." The Office Action correctly indicates on page 3 that Kawan does not teach displaying information in a graduated scale. However, on page 4 the Examiner asserts that Kelly overcomes this deficiency, stating "Examiner considers the entirety of Figure 13 to be a graduated scale." A "scale" as defined by Merriam-Webster's is "a series of marks or points at known intervals used to measure distances," or "a graduated series or scheme of rank or order." Retrieved on March 7, 2008, from Merriam-Webster's Online Dictionary: <http://www.merriam-webster.com/dictionary>. Thus, Figure 13 of Kelly can hardly be considered a graduated scale. As Applicants have previously argued, Figure 13 of Kelly is not a graduated scale; it is a game user interface that contains a graduated scale (Score Table 1308) and other user interface components that relate to a level of fulfillment of a bonus (Prize

Bucks point counter 1306, credits counter 1304). However, the occurrence of these different components within the same game user interface does not mean that *Kelly* teaches “a graduated scale directly showing graphically a state of fulfillment of a bonus,” as asserted by the Examiner.

Additionally, even assuming without conceding, that the combined disclosures of Kawan and Kelly teach all of the features in the recited claims, Applicants submit that the alleged combination of these references is improper and that no suitable reasoning for such a combination has been provided by the Office Action. Kawan describes a system for tracking and updating loyalty points, while Kelly relates to a tournament network gaming system and has nothing to do with merchant loyalty cards, points, or programs. Thus, there is no reasoning evident for one of skill in the art to combine Kelly with a reference dealing with loyalty cards or programs.

Additionally, since neither Kawan nor Kelly teaches or even suggests displaying multiple types of bonus data “in a uniform way” or “in a graduated scale,” Applicants submit that these cited references did not discover or appreciate the problem that is solved by the invention. Thus, there cannot be any expectation of success or any reason to modify or combine the references when one does not know that some modification or combination will solve a problem that the individual does not know even exists.

Therefore, Applicants submit that the alleged reasoning for combining Kawan and Kelly is a conclusion the Examiner has apparently reached after having benefited from reading Applicants’ own disclosure, and thus represents impermissible hindsight.

For at least the reasons discussed above, amended claims 14, 22, and 29 are not obvious over Kawan, Kelly, or their proposed combination. Dependent claims 16-17, 21, 23, and 25-28, are not obvious over Kawan and Kelly for at least the same reasons as their respective base claims, as well as based on the additional features recited therein.

Claims 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawan in view Kelly, and further in view of U.S. Patent No. 5,943,624 (Fox). However, since Fox does not teach or suggest displaying merchant loyalty program data “corresponding to at least two types of bonus counters stored in corresponding specific files and taken among frequency of

visits, recency of visits, cumulative amount spent, and promotion points,” or displaying “a graduated scale directly showing graphically a state of fulfillment of a bonus corresponding to said information in a uniform way between a zero level corresponding to no bonus available and a completion level corresponding to a maximum of bonus available,” as recited in amended claims 14, 22, and 29. Fox thus fails to overcome the above-discussed deficiencies of Kawan and Kelly. Therefore, claims 18-20 are allowable over Kawan, Kelly, Fox, and their proposed combination for at least the same reasons as their respective base claims, as well as based on the additional features recited therein.

Additionally, Applicants submit that alleged combination of Kawan and Kelly, further in combination with Fox is improper. For the reasons discussed above, the combination of Kawan and Kelly is itself improper, and thus the attempted combination of a third reference is an additional sign of non-obviousness. Furthermore, the Fox reference relates to a cellular telephone incorporating both a cellular telephone function and smart card functions relating to financial transaction functions and circuitry to contact a bank or financial institution for obtaining financial information. Thus, within the system of the Fox reference, it is possible to avoid altogether plastic smart cards. The alleged combination of Kawan, Kelly, and Fox relates to conventional techniques of displaying content of smart card registers on a mobile phone display screen. In contrast, claims 18-20 in corporation with base claim 14 relate to combining loyalty registers, performing a calculation on different types of bonuses and displaying the different bonuses in one unique and uniform way in a scaled manner. Since Fox, either alone or in combination with Kawan and/or Kelly, does not teach, suggest, or relate to these features of claims 18-20, Applicants respectfully submit that the combination of these references is improper.

### ***New Claims***

Applicants have added new claims 30-33 to clarify and more fully claim their invention. Claims 30 and 32 depend respectively from claims 14 and 22, and further recite, “converting the at least two types of bonus counter data into a single unit of measurement,” and “display[ing] the at least two types of bonus counter data in the graduated scale.” As discussed above with respect to claims 14, 22, and 29, neither Kawan nor Kelly teaches or suggests converting two different types of bonus data into a single measurement unit or displaying these different types of bonus

data in the same graduated scale. Thus, new claims 30 and 32 are allowable over the cited references for at least this additional reason.

Claims 31 and 33 further recite “wherein the state of fulfillment of the bonus is based on a combination of the at least two types of bonus counter data.” For similar reasons to those discussed above, neither Kawan nor Kelly teaches or suggests a bonus that is based on a combination of multiple different types of bonus data, as recited. Accordingly, new claims 31 and 33 are also allowable for at least this additional reason.

### **Conclusion**

Based on the foregoing, Applicants respectfully submit that the application is in condition for allowance and a Notice to that effect is earnestly solicited. Should the Examiner believe that anything further is desirable in order to place the application in even better form for allowance, the Examiner is respectfully urged to contact Applicants’ undersigned representative at the below-listed number.

Respectfully submitted,  
BANNER & WITCOFF, LTD.

Dated this 10<sup>th</sup> day of March, 2008

By: /Brian J. Brisnehan/  
Brian Brisnehan, Registration No. 60,462  
1100 13th Street, N.W.  
Washington, D.C. 20005-4051  
Tel: (202) 824-3324  
Fax: (202) 824-3001